**Aluf Plastics, A Division of API Industries, Inc. *and* International Ladies' Garment Workers' Union, AFL–CIO/CLC.** Case 2–CA–26698

August 12, 1994

## DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On February 3, 1994, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed the brief earlier filed with the judge.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[1]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Aluf Plastics, A Division of API Industries, Inc., Orangeburg, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent argues that it did not violate Sec. 8(a)(1) of the Act because the allegedly unlawful statements in the July 10 and 13, 1993 documents that were passed out to its Spanish-speaking employees were caused by ''a shoddy translation service,'' and because it did not intend to violate the Act. In addition to those reasons given by the judge for rejecting these arguments, we find under the doctrine of apparent authority that the Respondent is responsible for the translation of its speeches supplied to the employees. As the Board has indicated, ''[e]ven if the conduct of another was contrary to an employer's express instruction, the employer will be held responsible for that conduct if employees could reasonably believe that the acts were authorized.'' *Toyota of Berkeley*, 306 NLRB 893, 912 (1992). Such a situation applies here where the Respondent hired the translation service specifically to translate its speeches and then distributed the Spanish language translations after the English language speeches were given. Given these circumstances and the wording of the translations themselves, the employees would ''reasonably believe'' that the translations were authorized and the Respondent is thus legally responsible for them.

*Stephanie LaTour, Esq.* and *David Leach, Esq.*, for the General Counsel.
*Elliot J. Mandel, Esq. (Kaufman, Naness, Schneider & Rosensweig),* of Melville, New York, for the Respondent.
*Brent Garren, Esq.*, of New York, New York, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in New York, New York, on December 21, 1993.[1] Upon a charge filed on July 14, a complaint was issued on August 26, alleging that Aluf Plastics, a Division of API Industries, Inc. (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by the General Counsel and by the Respondent.

On the entire record of the case, including my observation of the demeanor of the one witness who testified, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent, a New York corporation with an office and place of business in Orangeburg, New York, has been engaged in the extrusion of polyethylene stock and related materials. It annually purchases and receives at its New York facility goods valued in excess of $50,000 directly from sources located outside the State of New York. Respondent admits, and I so find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I find, that International Ladies' Garment Workers' Union, AFL–CIO/CLC (Union) is a labor organization within the meaning of Section 2(5) of the Act.

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *The Facts*

An election was scheduled to be held among Respondent's employees in the appropriate bargaining unit on July 15. Approximately 30 percent of those employees are Spanish speaking. On July 10 and 13 Respondent distributed to the employees two documents written in Spanish. The July 10 document stated, in pertinent part:

> I have come to realize that some of you wish to vote that day for ILGWU, believing that it will get you better benefits. I would like to explain to you how this works: If ILGWU should win, they will have to sit with me and my lawyers to negotiate a new contract and all the benefits you have, you will lose. The negotiations of a contract with a new Union may take a long time (months and years). During this time I have no right to give you an increase or any other benefits and if I want, we will never reach an agreement.
>
> If ILGWU proposed an increase in some of the benefits that you now have, I would immediately propose to reduce all the benefits that you have now, be aware that right now no business is leaving big gains, for this reason if ILGWU makes too many demands, my lawyers

[1] All dates refer to 1993 unless otherwise specified.

> and myself will present our proposals, but there is something very important, if ILGWU wins, the health insurance that you now have with Local 17–18 will be cancelled immediately. . . . I am not against all Unions, but I am against Unions such as ILGWU since they try to put companies out of business by making absurd and excessive salary demands, and you may also lose your job. . . . If you really know me, the response is a simple one, protect yourself, the daily work and in that way you may have better benefits with your Local 17–18, then next Thursday, July 15, vote against ILGWU so that you will always have work at Aluf Plastics.

The July 13 document stated, in pertinent part:

> I don't mind telling you that we have prospered because Local 17–18 has helped us. They have struggled together with us so that our business would grow. I don't think that it is necessary to change the Union, because with I.L.G.W.U. we would go back to the past, I know that they have promised you many things. I will tell you something very clear, that I will not do anything for you if in the remote case you decide to vote for I.L.G.W.U. . . . . I am not saying that we'll go into bankruptcy, but if you ever get confused and vote for the false promises that the I.L.G.W.U. is offering and all those big absurd demands that that Union is requiring, I can assure you that the only thing left for me is to go into bankruptcy which would be the same as closing the company.

### B. *Discussion and Conclusions*

#### 1. Respondent's contentions

The complaint alleges that through the above-quoted documents, Respondent threatened employees with loss of benefits and loss of jobs if they selected the Union as their bargaining representative; promised employees continued employment if they did not select the Union; informed employees that it would be futile for them to select the Union; and threatened to close the facility if the employees selected the Union. Respondent maintains that the documents were translations of speeches originally given in English. Respondent argues that the original English speeches did not contain objectionable material but that Respondent hired a translation service which prepared the Spanish documents and mistranslated the English speeches. The record contains copies of both the original English speeches and translations of the Spanish documents. A comparison of the two shows that the contention that the translation service misinterpreted the speeches is highly implausible. The Spanish documents contain phrases which do not appear in the English speeches, delete sentences and make other changes.[2] It is highly unlikely that a professional, independent translation service would make these changes on its own.

[2] For example, the July 10 speech asserts that the ILGWU has lost ''80%'' of its members in the last 20 years. The Spanish document, however, as translated, states that the Union lost ''200,000 members'' over the last 20 years. It is most improbable that the translation service would have made this change.

In addition, Respondent is arguing that it did not intend to distribute information which contained statements violative of the Act. However, as the Board stated in *American Freightways Co*., 124 NLRB 146, 147 (1959):

> It is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct, which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.

See also *El Rancho Market*, 235 NLRB 468, 471 (1978).

Citing *15th Avenue Iron Works*, 279 NLRB 643 (1986), Respondent argues that there is no evidence that the Spanish-speaking employees read the documents and therefore no violation can be found. In that case the complaint alleged that respondent threatened a union official with bodily harm. The administrative law judge found that the threat was made to the official in Italian and no showing was made that the employees who were present understood Italian (id. at 654). In the instant proceeding it was stipulated that 30 percent of the bargaining unit employees are Spanish speaking and that the two documents, written in Spanish, were distributed to them. I believe that *15th Avenue Iron Works*, supra, is clearly distinguishable.

#### 2. Threatened loss of benefits and promise of continued employment

The July 10 document stated that ''if ILGWU should win, they will have to sit with me and my lawyers to negotiate a new contract and all the benefits you have, you will lose.'' The document further stated, ''if ILGWU proposed an increase in some of the benefits that you now have, I would immediately propose to reduce all the benefits that you now have.'' The document concluded, ''next Thursday, July 15, vote against ILGWU so that you will always have work at Aluf Plastics.'' The statements, ''all the benefits you have, you will lose'' and ''I would immediately propose to reduce all the benefits you have now'' were not based on any objective factual basis that could have made the statements permissible under Section 8(a)(1) of the Act. See *Laidlaw Transit*, 297 NLRB 742 (1990). I find these to be threats violative of Section 8(a)(1) of the Act. See *Shaw's Supermarkets*, 289 NLRB 844, 848 (1988). In addition, the statement ''vote against ILGWU so that you will always have work at Aluf Plastics'' violated Section 8(a)(1) of the Act because it promised benefits to the employees to dissuade them from seeking union representation. See *Sewell-Allen Big Star*, 294 NLRB 312, 315 (1989); *Columbus Mills*, 303 NLRB 223, 230 (1991).

#### 3. Futility of choosing Union

The complaint alleges that Respondent informed employees that it would be futile for them to select the Union as their bargaining representative. In the July 10 document Respondent stated, ''if I want, we will never reach an agreement.'' I find that this statement was intended to convey to the employees the view that it would be futile for them to choose the Union to be their bargaining representative, in violation of Section 8(a)(1) of the Act. See *Jones Plumbing*

*Co*., 277 NLRB 437, 440 (1985); *Jennie-O Foods*, 301 NLRB 305, 330 (1991).

4. Threat of loss of jobs

The July 10 document stated, ''I am against Unions such as the ILGWU since they try to put companies out of business by making absurd and excessive salary demands, and you may also lose your job.'' It is well settled that an employer violates Section 8(a)(1) of the Act when it threatens employees with discharge or job loss because of their union activities. See *Jasta Mfg. Co*., 246 NLRB 48 (1979). I find that by its statement ''you may also lose your job,'' Respondent threatened employees with loss of jobs if they selected the Union as their bargaining representative, in violation of Section 8(a)(1) of the Act. See *Columbus Mills*, supra, 303 NLRB at 232. In *299 Lincoln Street, Inc*., 292 NLRB 172, 173 (1988), the Board held that a statement which informed unit employees that their jobs could be lost violated the Act. The Board pointed out (at 173), ''Respondent's predictions are not accompanied by any objective facts that would tend to establish any substantial likelihood of their occurrence.''

5. Threat to close facility

In the July 13 document Respondent stated, ''if you ever get confused and vote for the false promises that the I.L.G.W.U. is offering and all those big absurd demands that the Union is requiring, I can assure you that the only thing left for me is to go into bankruptcy which would be the same as closing the company.'' Respondent gave no factual basis for its prediction that it might go into bankruptcy and would therefore close the company. I find that the statement, ''the only thing left for me is to go into bankruptcy which would be the same as closing the company'' violated Section 8(a)(1) of the Act by threatening employees that it would close its facility if they voted for the Union. See *Tomco Carburetor Co*., 275 NLRB 1, 4 (1985); *Quality Aluminum Products*, 278 NLRB 338 (1986), enfd. 813 F.2d 795 (6th Cir. 1987); *Columbus Mills*, supra, 303 NLRB at 235.

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees with loss of benefits and loss of jobs if they selected the Union as their bargaining representative; by promising employees continued employment if they did not select the Union; by informing employees that it would be futile for them to select the Union as their bargaining representative; and by threatening to close the facility if the employees selected the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

## ORDER

The Respondent, Aluf Plastics, a Division of API Industries, Inc., Orangeburg, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with loss of benefits and loss of jobs if they select the Union as their bargaining representative, promising employees continued employment if they do not select the Union, informing employees that it would be futile for them to select the Union and threatening to close the facility if the employees selected the Union as their bargaining representative.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Orangeburg, New York, copies of the attached notice marked ''Appendix.''[4] Copies of the notice on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and be maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing in which all parties were afforded the opportunity to present evidence it has been found that we violated the National Labor Relations Act in certain respects and we have been ordered to post this notice.

WE WILL NOT threaten employees with loss of benefits or loss of jobs if they select the Union as their bargaining representative, promise employees continued employment if they do not select the Union, inform employees that it would be

futile for them to select the Union and threaten to close the facility if the employees select the Union as their bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ALUF PLASTICS, A DIVISION OF API INDUSTRIES, INC.